

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STANLEY LUCKETT,

Plaintiff,

vs.

Case No. 08-CV-13775
HON. GEORGE CARAM STEEH

UNITED STATES OF AMERICA,

Defendants.

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ORDER ACCEPTING MAY 20, 2009 REPORT AND RECOMMENDATION
AND GRANTING DEFENDANT'S MOTION TO DISMISS AND
FOR SUMMARY JUDGMENT (# 7)

Plaintiff Stanley Lockett, a federal prisoner appearing pro se, filed a complaint on September 3, 2008 alleging his ear was bitten off by another federal inmate during a March 13, 2008 assault. Lockett alleges the Federal Bureau of Prisons ("FBP") is liable for failing to meet its duties under 18 U.S.C. § 4042(a) of safekeeping, care, and protection for all federal inmates, and that defendant United States of America is subject to liability under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b). All pretrial matters were referred to Magistrate Judge Charles Binder on November 11, 2008. Defendant United States filed a combined motion to dismiss and for summary judgment on January 20, 2009. On May 20, 2009, Magistrate Judge Binder issued a Report and Recommendation recommending that the defendant's motion be granted on two grounds: (1) lack of subject matter jurisdiction pursuant to the discretionary function exception to the waiver of sovereign immunity under the FTCA; and (2) failure to file an affidavit of merit under

Michigan law with respect to Lockett's claims to the extent they allege medical malpractice against FBP employees who treated Lockett's ear. Magistrate Binder recommends that the defendant's motion be denied as to Lockett's failure to exhaust administrative remedies. Pursuant to the first two recommendations, Magistrate Judge Binder recommends that Lockett's claims be dismissed in their entirety.

"A judge of the court shall make a de novo determination of those portions of [a] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636 (b)(1). Objections must be filed within 10 days after service of a Report and Recommendation. 28 U.S.C. § 636 (b)(1)(C). "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id. A party's failure to object waives further judicial review. Thomas v. Arn, 474 U.S. 140, 149-155 (1985); Thomas v. Halter, 131 F.Supp.2d 942, 944 (E.D. Mich. 2001); 28 U.S.C. § 636(b)(1). Issues raised on objection in a perfunctory manner are deemed waived. McPherson v. Kelsey, 125 F.3d 989, 995-96 (6th Cir. 1997).

Instead of filing specific objections to Judge Binder's Report and Recommendation, Lockett simply refiled his April 20, 2009 response to the motion to dismiss on June 1, 2009. Compare Docket No. 12 with Docket No. 14¹. Lockett has thus waived further judicial review by the perfunctory refile of his response, and failing to file timely objections to the Report and Recommendation. Arn, 474 U.S. at 149-155; Halter, 131 F.Supp.2d at 944; McPherson, 125 F.3d at 995-96.

¹ Lockett's April 20, 2009 response was titled "Plaintiff's Objections To Defendant's Motion to Dismiss or for Summary Judgment," as is the document refiled by Lockett on June 1, 2009. The documents are identical.

In the absence of timely objections, and upon review of the May 20, 2009 Report and Recommendation, the court hereby ACCEPTS the Report and Recommendation as its own. Accordingly,

Defendant's motion to dismiss and for summary judgment is hereby GRANTED. Plaintiff Lockett's claims are hereby DISMISSED with prejudice.

SO ORDERED.

Dated: June 29, 2009

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on June 29, 2009, by electronic and/or ordinary mail.

s/Josephine Chaffee
Deputy Clerk